

Chapter I

INTRODUCTION

A. An Overview of the Medical Board Enforcement Program Monitor Project

As a result of the Legislature’s 2001–02 sunset review of the Medical Board of California (MBC), Senate Bill 1950 (Figueroa) added section 2220.1 to the Business and Professions Code. Section 2220.1 provides for the appointment of an independent Medical Board Enforcement Program Monitor for a two-year period. The “enforcement monitor” concept is not new. The California Legislature has created enforcement monitor positions at four other occupational licensing agencies in the past two decades.¹ The concept is similar to that of an external independent auditor — independent of the board to be studied, and independent of the profession regulated by that board. Under all enforcement monitor legislation, the agency must cooperate with the monitor, who is delegated significant investigative authority and charged with conducting a lengthy in-depth study of a particular regulatory program, making findings and recommendations, and proposing legislative, regulatory, or administrative changes to improve the efficiency, effectiveness, and quality of the program and its decisionmaking.

Section 2220.1 charges the Medical Board Enforcement Monitor with evaluating “the disciplinary system and procedures of the board, making as his or her highest priority the reform and reengineering of the board’s enforcement program and operations and the improvement of the overall efficiency of the board’s disciplinary system.” The statute tasks the Monitor with several specific analyses, including a required evaluation of the Board’s Diversion Program for substance-abusing physicians, and requires the Monitor to publish two reports during the two-year appointment period.

¹ SB 1543 (Presley) (Chapter 1114, Statutes of 1986) enacted Business and Professions Code section 6086.9, which created a State Bar Discipline Monitor charged with evaluating and recommending improvements to the State Bar’s attorney discipline system. SB 2029 (Figueroa) (Chapter 1005, Statutes of 2000) enacted Business and Professions Code section 7092, which created the Contractors State License Board (CSLB) Enforcement Monitor position to study and recommend changes to CSLB’s contractor enforcement program. SB 26 (Figueroa) (Chapter 615, Statutes of 2001) enacted Business and Professions Code section 1601.3 to create the Dental Board Enforcement Monitor post at the Dental Board of California. SB 1542 (Figueroa) (Chapter 572, Statutes of 2004) created a Bureau of Automotive Repair Administration and Enforcement Monitor, which commenced in January 2005. In addition, SB 1544 (Figueroa) (Chapter 740, Statutes of 2004) created an “operations and administrative monitor” for the Bureau of Private Postsecondary and Vocational Education, also commencing in January 2005.

Following a competitive bidding process and the selection of the Monitor by the Department of Consumer Affairs (DCA) Director, the MBC Enforcement Monitor project began in late October 2003. During the first year of the project, the Monitor and her colleagues studied the history of six major legislative enactments that have shaped the structure and purpose of MBC's enforcement program over the past thirty years; surveyed twenty previous studies and reports on MBC's enforcement and diversion programs; reviewed MBC-generated documents and procedure manuals relevant to its enforcement and diversion programs; interviewed more than 90 experts and witnesses representing all stakeholder groups; gathered and analyzed statistical data; and identified numerous issues and developed recommendations relating to the Board's enforcement and diversion programs.

On November 1, 2004, the Monitor released the *Initial Report of the Medical Board Enforcement Program Monitor*. The report — summarized in Chapter III below — made hundreds of findings and 65 specific recommendations for reform. The Monitor team unveiled the *Initial Report* to the Medical Board at its regularly-scheduled November 4, 2004 quarterly meeting in San Diego. Thereafter, the Board convened a special meeting on January 21, 2005 in Burbank. This meeting was devoted exclusively to the Monitor's findings and recommendations, and involved an extensive discussion of the concept of "vertical prosecution" as recommended in Chapters VII and IX of the *Initial Report*, other Monitor recommendations, and the increased costs of enforcement over the prior eleven years during which physician licensing fees had stagnated. Following the Monitor's presentation and Board discussion, MBC unanimously voted to support the concept of vertical prosecution and a fee increase to \$800 per biennial renewal cycle.

On January 25, 2005, the *Initial Report* was the subject of a four-hour "sunset review hearing" convened by the Joint Committee on Boards, Commissions and Consumer Protection chaired by Senator Liz Figueroa. Present to testify on the *Initial Report* were representatives of the Monitor team, the Medical Board, several physician organizations, and interested members of the public.

Commencing in April 2005, many of the Monitor's most important recommendations were amended into Senate Bill 231 (Figueroa). Throughout the summer of 2005, the bill was amended several times to include additional provisions and streamlined to eliminate opposition. At its May and July 2005 meetings, the Medical Board — led by Board President Ronald Wender, M.D., and Executive Director Dave Thornton — continued to focus attention on the issues raised in the *Initial Report* and pledged support for SB 231 and nearly all of the Monitor's recommendations. In addition, the staff of the Medical Board's enforcement program and the Health Quality Enforcement (HQE) Section of the Attorney General's Office began to implement Monitor recommendations that did not require legislative change. In short, both MBC and HQE embraced almost all of the Monitor's recommendations; this support is reflected in the matrix of MBC/HQE responses to the

65 recommendations contained in Chapter XVII below. On October 7, 2005, Governor Arnold Schwarzenegger signed SB 231 (Figueroa), which is summarized in Chapter IV below and described in detail throughout this report.

Under section 2220.1, the Medical Board Enforcement Program Monitor project ends on November 1, 2005. This *Final Report of the Medical Board Enforcement Program Monitor* describes the details of this fundamental reform legislation and its impacts on the various components of the Medical Board's enforcement program. Additionally, it includes updated enforcement program data for fiscal year 2004–05 and documents the efforts of MBC and HQE to implement other Monitor recommendations that do not require legislation. Lastly, it includes final recommendations for future consideration by the Medical Board, the Attorney General's Office, the Legislature, and the Schwarzenegger administration.

B. Data Issues

As in the *Initial Report*, we present two *caveats* about the data presented in this *Final Report*. The first concerns the scope of the data. The Medical Board's enforcement program serves not only the Medical Board, but also several so-called "allied health licensing programs" (AHLPs) which regulate non-physician health care practitioners and which were previously committees of the Medical Board and subject to its jurisdiction. In recent years, most AHLPs have successfully sought legislation separating themselves from the jurisdiction of MBC; however, some of them still contract for the use of components of MBC's enforcement program to varying degrees. Because SB 1950 (Figueroa) and the Enforcement Monitor statute reveal the Legislature's intent to strengthen MBC's *physician* discipline program, the data presented in this report focus on MBC's handling of cases against physicians. We have generally excluded AHLP enforcement data — which in any event constitute only a small proportion of overall MBC enforcement program workload.

A second caveat about the data presented in this report involves the presence of minor differences between some of the statistics included in this report and comparable statistics published by MBC and/or DCA. In order to properly complete analyses of all of the issues contained in our scope of work, a number of special compilations of statistical data from the MBC complaint tracking system were prepared for us by MBC staff. In most cases, these special compilations were prepared within a few weeks of MBC's compilation of comparable statistical data for MBC's and DCA's published reports. However, MBC's complaint tracking system is dynamic in the sense that it is continuously updated to reflect the status of every individual complaint. Sometimes, after being closed, a complaint or investigation may be reopened. Also, reopened complaints and investigations will, at some point, be re-closed. These types of changes can marginally impact the results of various statistical compilations produced from the complaint tracking system at slightly different points in

time. Except where otherwise noted in this report, minor differences between the statistics shown in this report and comparable statistics published by MBC and/or DCA are attributable to legitimate changes that were made to complaint tracking system data between the dates when the statistical data used in the different reports were compiled.